

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>IN STITCHES, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	<p>▲</p>
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Steven L. Zimmerman, Esq. Rubin & Zimmerman, P.C.</p> <p>Address: 9725 East Hampden Avenue, Suite 330 Denver, Colorado 80231</p> <p>Phone Number: (303) 306-6191</p> <p>Attorney Reg. No.:</p>	<p>Docket Number: 37912</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on July 13, 2001, Karen E. Hart, Mark R. Linné, and Debra A. Baumbach presiding. Petitioner was represented by Steven Zimmerman, Esq. Respondent was represented by Eugene Kottenstette, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**PERSONAL PROPERTY
(Denver County Schedule No. 321-612-00-0)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1993 thru 1997. The Respondent valued the subject property as omitted property for the years in question after a 1998 audit. The subject is a garment manufacturing company.

ISSUES:

Petitioner:

Petitioner contends that the Respondent has incorrectly valued the subject property. The bookkeeping records from the previous owner were incomplete for most of the years. There were errors contained in the asset ledger reportedly indicating a higher value for the assets.

Respondent:

Respondent contends that the subject property has been correctly valued. The Personal Property Tax Declarations were not filed for 5 years, and the valuation was based on the best information that was available.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. John F. Laws of A & T Data Systems, Inc., presented the following indicators of value:

1993 Original Equipment Cost:	\$110,101.00
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2. Mr. Laws testified that the subject property is a garment manufacturing company that produces shirts, hats, and garments. The business commenced operation in 1992 as "Sport America Headwear & Activewear." In 1994 Mr. Leonard Schroeder became owner of the company. The corporate name was changed from "Sport America Headwear & Activewear Inc." to "In Stitches, Inc.," on June 30, 1998.

3. Mr. Laws testified that he was engaged by the Petitioner in 1998 to provide accounting services for the company. Upon examination of the records, it was established that ledgers were maintained; however, the records were incomplete for most of the prior years and tax returns were not filed.

4. Petitioner's witness prepared a schedule of the assets by auditing prior tax returns and ledgers. The majority of the fixed assets appeared to have been there since inception. An error was discovered in reconciling the records indicating an initially higher value for the assets than what could be accounted for. The error appeared to be transferred from the previous owner.

5. In an attempt to determine a value of the assets, a summary was created from company records and checks. In addition to the checks and ledgers, other checks were examined from shareholders for any expenditure for other assets. Other purchases on behalf of or by the company of additional assets were calculated and reconciled to the ledger. Amended tax returns were filed reflecting the corrections.

6. The total asset list and value was concluded to be substantially less than what was originally filed and reported. After reconciliation of all relevant data, the witness concluded an originally cost of \$101,101.00 for 1993.

7. Under cross-examination, Mr. Laws testified he believes the copies of checks contained in Exhibit 10 appeared to be temporary checks. There were some invoices that supported the check amounts and approximately 10 checks per month were tested against the ledger entries. All assets owned and utilized longer than 1 year were considered to be equipment, not inventory.

8. Upon questioning from the Board, Mr. Laws testified that he found a few invoices backing up the checks. He does not dispute the values for subsequent purchases and deletions, only the original equipment value.

9. Petitioner is requesting a 1993 actual value of \$110,101.00, a 1994 actual value of \$198,868.00, a 1995 actual value of \$190,076.00, a 1996 actual value of \$170,646.00, and a 1997 actual value of \$151,332.00 for the subject property.

10. Respondent's witness, Ms. Bessie Sawyer, Auditor in the Personal Property Section of the Denver County Assessor's Office, presented the following originally assigned value:

Arbitrary Cost: \$50,000.00 per year, for tax years 1993-1997

11. Ms. Sawyer testified that cost estimate schedules for each tax year were based on arbitrary cost estimates of \$50,000.00 annually.

12. Ms. Sawyer testified that typically she relies on the taxpayer's records as supplied to her during an audit. In this case, she requested further supporting documentation, which was not supplied.

13. Ms. Sawyer testified that Personal Property Declarations were sent to the Petitioner, with no response. The company was selected for an audit in 1997 due to failure to file Personal Property Declaration statements for the past 5 years.

14. The witness further testified that she preformed a physical inspection of the subject in January of 1998. The previous accountant had provided a general ledger with an asset listing and indicated that she was aware the tax returns were not filed. The general ledger and tax returns supported the asset costs of \$417,821.00.

15. Ms. Sawyer testified that she prepared a listing of the assets, performed an inspection, and discussed the values with the Petitioner. Mr. Schroader did not voice any objection to the cost schedules. The cost approach was utilized; the market and income approaches were not considered. She believed that the value of the assets she was able to observe on her inspection seemed to be in line with what was indicated on the tax returns and with the personal property values of similar businesses.

16. There was a summary provided of equipment that was purchased, and copies of checks submitted. The information provided did not seem to identify which specific assets were purchased.

17. Under cross-examination, Ms. Sawyer testified that she did not assign individual values to the assets. The assets were considered to be predominately the same classification. The values that were placed upon the assets were based on the original tax returns, which she gave great weight to. Documents to support the reduction on the amended tax returns were requested; however, were not supplied. Ms. Sawyer testified that had the Petitioner declared the values for the years in question, the assigned value would have been higher than what she valued them as.

18. Respondent assigned a 1993 actual value of \$273,973.00, a 1994 actual value of \$247,686.00, a 1995 actual value of \$318,937.00, a 1996 actual value of \$297,639.00, and a 1997 actual value of \$275,198.00 for the subject property.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax years 1993, 1994, 1995, 1996, and 1997.

2. A brief summary of this case follows: Petitioner failed to file Personal Property Declaration Schedules for the tax years in question. As a result, Respondent assigned what was referred to as an “arbitrary cost” of \$50,000.00 annually to Petitioner’s account. Finally, in 1998, Petitioner supplied Respondent with general ledger information, as well as federal tax returns and depreciation schedules, regarding its personal property. In January of 1998, Respondent conducted an audit but did not assign independent values to the property. Notices of valuation for omitted property were sent to Petitioner. Petitioner later filed corrected federal tax returns and supplied the new information to Respondent, but the valuation was not corrected. Petitioner subsequently filed abatement petitions for all years in question.

3. The Board heard testimony and was presented evidence regarding the proper valuation of the subject property, and whether the corrected information should be the determining factor in the value of the subject property. We have determined that the corrected federal tax return information should be used for the value of the property, as the original returns had been the basis for the omitted property valuations. However, upon examination of the evidence and testimony presented, the Board realized that a matter of law was involved, to wit: After assigning a best information available valuation to Petitioner’s property for each of the tax years in question, could Respondent later assign a higher value and go back five years to collect taxes as omitted property? We believe they cannot.

4. C.R.S. 39-5-125 (1), states “Whenever it is discovered that any taxable property has been omitted from the assessment roll of any year or series of years, the assessor shall immediately determine the value of such omitted property and shall list the same on the assessment roll of the year in which the discovery was made and shall notify the treasurer of any unpaid taxes on such property for prior years.”

5. C.R.S. 39-10-101 (b)(I) and (II) state the limitations on collecting back taxes, depending on the circumstances of the discovery of the omitted property.

6. The aforementioned statutes allow assessors to list omitted property for multiple years under certain circumstances. We believe that this case hinges on whether Petitioner’s property was in fact omitted and not simply undervalued.

7. The Division of Property Taxation Assessors Reference Library Volume 2, pages 3.19 through 3.22 address the omitted property issue. The manual cautions that “When adding omitted property valuation after the statutory close of the assessment period, care must be exercised to distinguish the difference between truly omitted property and an under valuation. If the item of personal property... was not listed in the appraisal records and/or its value had not been placed on the assessment roll, the property has been omitted.” It further states, “If a value had been placed on the property and the taxpayer has evidence of the value by either the previous tax bill or a Notice of Valuation and it is later discovered that the property has a greater value, the property has been undervalued and the value cannot be increased.”

8. In this case, a value was placed on the equipment and a notice of value was mailed. Therefore, we believe that the subject property was not omitted property, but was merely under valued.

9. C.R.S. 39-5-116 (1) states in part, “Further, if any person fails to complete and file one or more schedules by April 15 ...the assessor may determine the actual value of such person’s taxable personal property on the basis of the best information available to and obtainable by him and shall promptly notify such person or his agent of such valuation.”

10. The evidence and testimony presented in this case clearly shows that Respondent assigned a value of \$50,000.00 to Petitioner’s personal property for each year in question. Although Respondent called the assessment an “arbitrary cost,” the valuations assigned were obviously “best information available” (BIA) assessments. In assigning a value to the property, Respondent was effectively valuing all personal property owned by Petitioner in each tax year. Respondent may not later attempt to increase the valuation if it discovers its “best information available” assessments were too low, just as a Petitioner may not later claim a “best information available” assessment was too high.

11. We find that the original assigned value of \$50,000.00 must stand as a “best information available” assessment and may not be increased by Respondent. We conclude that the 1993-1997 actual value of the subject property should be reduced to \$50,000.00 for each tax year.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 1993 through 1997 actual value for the subject property of \$50,000.00 for each tax year.

The Denver County Assessor is directed to change his records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 31st day of August, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E. Hart

Karen E. Hart

Mark R. Linné

Mark R. Linné

Debra A. Baumbach

Debra A. Baumbach

This decision was put on the record

AUG 31 2001

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen

Diane Von Dollen 37912.02



<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>IN STITCHES, INC.,</p> <p>v.</p> <p>Respondent:</p> <p>DENVER COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Steven L. Zimmerman, Esq. Address: 9725 East Hampden Avenue, Suite 330 Denver, Colorado 80231 Phone Number: (303) 306-6191</p>	<p>Docket Number: 37912</p>
<p align="center">ORDER GRANTING MOTION TO RECONSIDER ISSUES, FINDINGS OF FACT, CONCLUSIONS, AND ORDER</p>	

THIS MATTER came to be heard by the Board of Assessment Appeals upon the filing of the Respondent’s Motion to Reconsider Issues, Findings of Fact, Conclusions, and Order. Having reviewed said motion, the Response to Motion to Respondent’s Reconsider Issues, Findings of Fact, Conclusions and Order and the Board’s file on the matter, the Board finds that said motion states good and sufficient grounds and should be granted. However, for the following reasons, the Board order to which the motion is directed is affirmed on the merits.

1. The Board’s August 31, 2001 order and the Response to Motion to Respondent’s Reconsider Issues, Findings of Fact, Conclusions and Order are well reasoned and based on the record and current property tax law in Colorado.

2. The Respondent’s Motion to Reconsider Issues, Findings of Fact, Conclusions, and Order at page 4 also seeks a stay of the Respondent’s obligation to abate or refund the taxes involved until all appeals are final “since the Taxpayer is no longer in business and the property securing taxes assessed no longer is available to satisfy the statutory lien.”

3. The Petitioner's response does not address the Respondent's request for a stay of the Board's August 31, 2001 order.

4. No provision of the statutes governing Board proceedings was discovered authorizing the Board to enter a stay.

ORDER:

The Board denies the Respondent's Motion to enter a stay.

The order is affirmed in all other respects.

DATED and MAILED this 5th day of October, 2001.

BOARD OF ASSESSMENT APPEALS

Karen E Hart
Karen E. Hart

Mark R. Linné
Mark R. Linné

Debra A. Baumbach
Debra A. Baumbach

This decision was put on the record

OCT 04 2001

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen
Diane Von Dollen

